

ELECTRIC VEHICLE PUBLIC CHARGING PILOT SERVICE AGREEMENT

THIS ELECTRIC VEHICLE PUBLIC CHARGING PILOT SERVICE AGREEMENT (the “Agreement”), made this _____ day of _____, _____ (“Effective Date”) by and between NORTHERN STATES POWER COMPANY, a Minnesota corporation, doing business as Xcel Energy (“Xcel Energy”), 414 Nicollet Mall, Minneapolis, Minnesota 55401, and the City of Saint Paul, 15 W Kellogg Blvd, Saint Paul, Minnesota, 55102, (“Customer”). Customer and Xcel Energy may be referred to herein individually as a “Party” or collectively as the Parties.

RECITALS

WHEREAS, the City of Saint Paul received federal funding as the lead agency to deploy the Twin Cities Electric Vehicle Mobility Network, involving installation of Electric Vehicle Charging Stations in the public right-of-way and other Customer property for the operation of EV carshare by a carshare partner selected by Customer and for public EV charging by consumers; and

WHEREAS, Xcel Energy is providing the EV Supply Infrastructure to the Charging Stations and is responsible for the operations and maintenance of the EV Supply Infrastructure in accordance with the terms of this Agreement; and

WHEREAS, a separate agreement between Xcel Energy and the City of Minneapolis will address the Charging Stations within the Minneapolis city limits; and

WHEREAS, the City of Saint Paul will provide the Charging Equipment and will be responsible for the operations and maintenance of the charging equipment, including the cost of the power consumed; and

WHEREAS, the City of Saint Paul will enter into a separate agreement with a vendor for the dedicated use of Charging Equipment at each Customer Location;

NOW, THEREFORE, the parties hereto, each in consideration of the promises of the other in this Agreement, agree as follows:

1. Definitions

- “Applicable Laws” means all applicable federal and state laws, codes, ordinances, rules, regulations, judgments, decrees, directives, guidelines and policy requirements including the Franchise Agreements of both the Customer and Xcel Energy, and orders of any governmental person having jurisdiction over the Pilot Project, the practices involved in the Pilot Project, or any work Xcel Energy or Customer performs.
- “Calendar Days” means every day shown on the calendar, beginning and ending at midnight.
- “Charging Equipment” means the electric vehicle charging equipment installed by Customer at the Customer Location used to deliver electricity from the EV Supply Infrastructure to an electric vehicle. Charging Equipment includes the ungrounded, grounded, and equipment grounding conductors, the electric vehicle connectors, attachment plugs, and all other fittings, devices,

power outlets or apparatuses associated with the installed device, but does not include EV Supply Infrastructure.

- “Charging Station” means a station consisting of all Charging Equipment which, when connected to the EV Supply Infrastructure, is collectively as a unit required to deliver EV charging services to Consumers at the Customer Location.
- “Consumer” means an individual who uses the Charging Equipment at the Customer Location to charge an electric vehicle.
- “Customer Location” means the individual locations set forth in Schedule A of this Agreement. Subject to the Customer Location Requirements set forth in Section 2.2 of this Agreement and each Party’s approval of each Customer Location, the Customer Locations set forth in Schedule A will be updated, modified and finalized through written agreement by both parties by no later than the end of June 2021.
- “DCFC Charging Equipment” means Charging Equipment capable of delivering at least 50 kW via direct current using both CHAdeMO and SAE CCS charging connectors.
- “Dispute” means a disagreement between Xcel Energy and Customer that arises under or that relates to the Agreement.
- “Early Buyout Amount” means the undepreciated balance of the EV Supply Infrastructure Costs at the time of termination which shall be calculated as the EV Supply Infrastructure Costs applicable to the terminated Customer Location reduced to reflect a ten (10) year straight-line depreciation from the In-Service Date to the date of termination of the Agreement with respect to that Customer Location. Xcel Energy shall provide for each Customer Location an estimated Early Buyout Amount with the Construction Drawings and the final Early Buyout Amount following the In-Service Date. In the event the Agreement is terminated by Customer under Section 5.1 or terminated by Xcel Energy for Customer’s breach under Section 5.2.3 prior to the In-Service Date, the Early Buyout Amount shall equal the EV Supply Infrastructure Costs.
- “EV Supply Infrastructure” means all the electric vehicle charging infrastructure (excluding the Charging Equipment) and all associated equipment installed by Xcel Energy at the Customer Location necessary to connect the Charging Equipment to Xcel Energy’s electric distribution system, and includes but is not limited to the following: poles, conduits, ducts, cables, concrete pads, manholes, handholes, supporting foundations, switchboards, meters, and electrical wiring and conduit between the transformer and main power distribution cabinet and between the main power distribution cabinet to the Charging Equipment.
- “EV Supply Infrastructure Costs” means the total costs and expenditures incurred by Xcel Energy to procure, design, construct and install the EV Supply Infrastructure at each Customer Location, including but not limited to costs of labor, labor loading, materials, transportation, overhead, indirect allocated costs, any allowance for funds used during construction (AFUDC) and any other capital related expenditures.
- “Facilities” means any privately, publicly, or cooperatively owned line, system, and or other utility item that produces, transmits, or distributes communications, power, cable, television, electricity,

light, heat, gas, oil, crude products, water, steam, waste, storm water, signal systems, and other products or services that serve the public, and/or a privately-owned irrigation system. Any necessary appurtenances to each Facility are considered a part of it.

- “Force Majeure Event” means pandemic, fire, floods, explosion, catastrophe, accident, declared war, riot, acts of God, acts of terrorism, insurrection, strike, and applicable laws or orders that prevent performance, to the extent (i) such event is beyond a Party’s control, that due diligence and use of reasonable efforts by the Party claiming the Force Majeure Event could not have avoided or prevented, (ii) that materially and adversely affects a Party’s ability to meet its obligations under this Agreement, and (iii) the Party claiming the Force Majeure Event gives prompt written notice of the same to the other Party. A Force Majeure Event does not include events due to the acts or omissions of the Party claiming the Force Majeure Event.
- “Franchise Agreements” means the electric franchise agreements between Customer and Xcel Energy last renewed by City of Saint Paul City Council on July 26, 2006, as may be renewed or amended from time to time.
- “In-Service Date” means the date that the EV Supply Infrastructure has been completed for the specific Customer Location, is ready for Customer to use, and the Charging Equipment at the Customer Location has been installed, connected, tested and ready to use by Customer and the Consumers. Following the installation and testing of the Charging Equipment at each Customer Location the Parties will mutually agree and document the In-Service Date applicable to the Customer Location.
- “Not Public Data” has the same definition as under Minn. Stat. § 13.02, subd. 8a, and means any Customer or Xcel Energy data which is classified by statute, federal law, or temporary classification as confidential, private, nonpublic, or protected nonpublic.
- “Pilot Project” means the activities of both Parties during the Term that relate to the installation and ongoing maintenance of EV Supply Infrastructure and Charging Equipment to support EV charging by Consumers at the Customer Location.
- “Working Days” means any Calendar Day, excluding Saturdays, Sundays, and legal public holidays, as set forth in 5 U.S.C. § 6103(a).

2. Eligibility and Availability

2.1 To be eligible to participate in the Pilot Project and prior to Xcel Energy undertaking any Xcel Energy responsibility set forth in Section 4, Customer must meet all of the following requirements (the “Customer Requirements”):

2.1.1 Qualify as a non-residential customer;

2.1.2 Own or lease the Customer Location, or be Xcel Energy’s customer of record associated with the premises electric service meter at the Customer Location;

2.1.3 Provide express written consent, in a form acceptable to Xcel Energy in its sole discretion, from the owner of the Customer Location to grant Xcel Energy the appropriate real property rights and continuous access to EV Supply

Infrastructure installed, owned, and maintained by Xcel Energy, including any necessary license agreements or easements signed by the owner of the Customer Location and approved by Xcel Energy; provided, however, for any Customer Location located in the public right-of-way, the rights required by this Section shall be provided under the Franchise Agreements, unless otherwise agreed by the Parties;

- 2.1.4 During the Term, agree to take electric service to the Charging Stations on Xcel Energy's published A90 rate, or any rate that replaces the A90 rate;
 - 2.1.5 Ensure all Charging Station electric load is separately metered from any other load served at the Customer Location; and,
 - 2.1.6 The ability, financial, technical or otherwise, to install Charging Stations including Charging Stations including Charging Stations that have smart-charging capabilities, and Charging Equipment that meets requirements for Minnesota's Diesel Replacement program.
- 2.2 To be eligible to participate in the Pilot Project, the Customer must meet the following requirements (the "Customer Location Requirements"), and failure of an individual Customer Location to meet the Customer Location Requirements (such determination to be made in Xcel Energy's sole discretion) will void any of Xcel Energy's obligations under Section 4 of this Agreement with respect to such Customer Location:
- 2.2.1 Be located in Xcel Energy's service territory and on corridors or in in high-utilization areas, as determined by Xcel Energy in its sole discretion (all of Minneapolis and Saint Paul fit this criteria);
 - 2.2.2 Be located in public places that generally allow for access twenty-four (24) hours each day, seven (7) days each week;
 - 2.2.3 Meet Xcel Energy's minimum safety, accessibility, convenience, and reliability requirements;
 - 2.2.4 The Customer Location must, In Xcel Energy's sole determination, be in a location that will allow Charging Stations to be deployed in a cost-effective manner, based on factors such as proximity to transformers, length of trenching, available transmission and distribution capacity, and ease of access for electric vehicle drivers.

3. Customer Responsibilities

- 3.1 Except for the costs incurred by Xcel Energy to undertake the responsibilities set forth in Section 4 of this Agreement, Customer will pay all other costs of the Pilot Project.
- 3.2 Customer will assist in coordinating installation and maintenance of the EV Supply Infrastructure at the Customer Location with Xcel Energy and Xcel Energy's contractor(s), including any applicable Charging Equipment manufacturers, vendors, or subcontractors, who provide services in connection with installing and maintaining the EV Supply

Infrastructure. This will include issuing or obtaining any necessary license or permit according to Applicable Laws which will allow Xcel Energy and its contractor(s) access to the Customer Location for the installation and maintenance of the EV Supply Infrastructure. Customer will also meet regularly with Xcel Energy to review and coordinate time schedules and track EV Supply Infrastructure and Charging Equipment installation status.

- 3.3 Customer will be responsible for the procurement of all necessary Charging Equipment for the Pilot Project at each Customer Location that meet Customer Requirements and shall provide proof of purchase to Xcel Energy of the required Charging Equipment for each Customer Location prior to Xcel Energy undertaking any design work as set forth in Section 4.1 or construction work as set forth in Section 4.2 for such Customer Location. Failure to provide proof of purchase of the required Charging Equipment for any Customer Location by September 30, 2021 will void any of Xcel Energy's obligations under Section 4 of this Agreement with respect to such Customer Locations, and Xcel Energy may terminate, in its sole discretion, this Agreement with respect to the affected Customer Locations immediately upon written notice to Customer in the event of such failure.
- 3.4 Customer will provide Xcel Energy with accurate and complete information regarding the Pilot Project in order to permit Xcel Energy to successfully install, complete and monitor the EV Supply Infrastructure for the Pilot Project. Customer consents to and permits Xcel Energy to have remote access in order to access, collect, and share data from the Charging Equipment with respect to charging activity, vehicle usage, and technical performance (the "Data") during the Term of this Agreement. If the Data cannot be remotely accessed by Xcel Energy, then Customer agrees to provide to Xcel Energy the following information within 90 calendar days after the In-Service Date for each Customer Location and to be updated by the end of February of every year of the Term:
- (a) number of charging ports at each Customer Location, and individual port capacities;
 - (b) costs to install Charging Equipment;
 - (c) rates and fees charged to end-use customers, and if rates changed during the year, when particular rates were in effect;
 - (d) any public and/or private funds leveraged to install or maintain the Charging Equipment;
 - (e) number of charging events, times, and durations, if the Charging Equipment is capable of providing such information;
 - (f) percentage of charging that aligns with onsite generation at the Customer Location, if applicable; and
 - (g) any other information relating to the Pilot Project that the Minnesota Public Utilities Commission may require Xcel Energy to report.

Subject to Section 7.9. and except for information or documents properly designated by Customer as “Not Public Data,” Xcel Energy shall not be prohibited or restricted from disclosure or use of any Data, information, or documents it receives from Customer, nor is Xcel Energy prohibited or restricted from disclosing “Not Public Data” in connection with any legal or regulatory proceeding, provided Xcel Energy provides Customer with notice pursuant to Section 7.9.

- 3.5 Customer will pay for power consumed by the EV Supply Infrastructure and dispensed from the Charging Equipment at Xcel Energy’s A90 service rate schedule, or any subsequent service rate schedule which replaces or modifies the A90 service rate schedule. If at any point during the Term Xcel Energy’s public charging pilot is taken to scale as a program with terms different from the A90 service rate schedule, or if the A90 service rate schedule is modified for any reason, Customer may switch to the modified tariff for the remainder of the Term, and Customer shall pay for power consumed by the EV Supply Infrastructure and/or dispensed from the Charging Equipment at such modified tariff upon the effective date of the new tariff.
- 3.6 The rates Customer will charge Consumers for using the Charging Equipment at Customer Location will reflect the on-peak and off-peak time periods of the A90 service rate schedule, or any subsequent service rate schedule, and will include an energy rate differential ratio of at least 2:1. Customer may opt out of this default arrangement at its discretion to set pricing that reflects other considerations or needs, provided that the prices Customer charges to Consumers are reported to Xcel Energy as set forth in Section 3.4.
- 3.7 After installation of both the Charging Equipment and EV Supply Infrastructure is completed, Customer will operate and maintain the Charging Equipment at the Customer Location for the Term of this Agreement, and guarantees the safe and reliable operation of the Charging Equipment in accordance with applicable laws, rules and regulations.
 - 3.7.1 During the Term, Customer grants Xcel Energy, and its officers, agents, representatives, employees, and contractors a right of ingress and egress to the Customer Location on a seven (7) day, twenty-four (24) hour per day basis.
 - 3.7.2 In the event that a physical disturbance of the Customer Location is required to construct, install, maintain, operate, repair, and remove EV Supply Infrastructure, Xcel Energy agrees to apply for all licenses or permits necessary to complete the installation of the EV Charging Equipment, which permits or licenses will not be unreasonably withheld or delayed by Customer. Customer will provide all information and cooperation reasonably requested by Xcel Energy to secure the required licenses or permits.
- 3.8 After installation of both the Charging Equipment and EV Supply Infrastructure is completed, Customer will make the Charging Equipment at Customer Location available to the public or to the vendor designated to use the Charging Equipment (e.g. HOURCAR) for EV charging twenty-four (24) hours each day, seven (7) days each week, except at times when the Charging Equipment or EV Supply Infrastructure fails to operate, or otherwise requires repair. Customer will ensure that, on the whole, the Charging

Equipment will be in full working order and will be available to the public for EV charging at least 95% of the time during each calendar year.

- 3.9 Customer may remedy minor issues with the EV Supply Infrastructure that do not require qualified technicians to address, such as resetting infrequently tripped circuit breakers.
- 3.10 Excepting minor issues that may be rectified by Customer pursuant to Section 3.9, Customer will promptly notify Xcel Energy in the event Customer becomes aware that the Charging Equipment or EV Supply Infrastructure fails to operate or otherwise requires repair or is unavailable for use as required by Section 3.8.
- 3.11 In the case of total equipment failure of a portion of the EV Supply Infrastructure that is caused by Customer, any of Customer's employees, agents, or partners, including HOURCAR or other partner engaged by Customer for the dedicated use of Charging Equipment and not covered by warranty, Customer may either request that Xcel Energy replace the necessary equipment at Customer's expense or terminate this Agreement solely with respect to the individual affected Customer Location, pursuant to Section 5.1 and will pay Xcel Energy the Early Buyout Amount as set forth in Section 5.1.
- 3.12 Customer will maintain the area surrounding the EV Supply Infrastructure, including, but not limited to, pavement maintenance, snow removal and removal of graffiti.
- 3.13 Customer will participate in surveys initiated by Xcel Energy and provide feedback about the Pilot Project.

4 Xcel Energy Responsibilities

- 4.1 Xcel Energy and/or qualified and competent contractors hired by Xcel Energy will prepare construction drawings ("Construction Drawings") for the EV Supply Infrastructure at location(s) within the Customer Location determined by Customer in coordination with Xcel Energy. The Construction Drawings will show the proposed EV Supply Infrastructure and its location(s) within the Customer Location. Prior to Xcel Energy commencing construction of the EV Supply Infrastructure, Customer shall approve the Construction Drawings subject to Applicable Laws—and only after review by the Customer and resolution of any comments or issues. Once approved, the Construction Drawings may be modified only with the mutual consent of both Parties.
- 4.2 Xcel Energy will prepare and coordinate the EV Supply Infrastructure installation schedule ("Installation Schedule") with designated Customer staff as to minimize disruption to Customer's operations. Xcel Energy will also meet regularly with Customer staff to review and coordinate time schedules and track EV Supply Infrastructure status. Prior to Xcel Energy commencing construction of the EV Supply Infrastructure, Customer must approve the Installation Schedule. Once approved, the Installation Schedule may be modified only with the mutual consent of both Parties.
- 4.3 Xcel Energy will install the EV Supply Infrastructure pursuant to the approved Installation Schedule and consistent with the approved Construction Drawings in a good and workmanlike manner, with qualified and competent contractors, in compliance with all applicable codes and engineering standards, and in compliance with all Applicable Laws.

- 4.3.1 Xcel Energy shall preserve and protect all utilities located on the Customer Locations covered by this Agreement at no expense to Customer, and it shall be the responsibility of Xcel Energy to call the Gopher State One Call System at 1-800-252-1166 at least 48 hours prior to performing any physical disturbance of the Customer Location.
 - 4.3.2 During installation, Xcel shall ensure compliance with Minnesota Uniform Control Device (MnMUCD) and Temporary Pedestrian Access Route (TPAR) code.
- 4.4 Xcel Energy will retain title and ownership of the EV Supply Infrastructure once installation and commissioning are completed. Customer shall acquire no right, title, or interest in any portion of the work performed by Xcel Energy or Xcel Energy's equipment, EV Supply Infrastructure or Facilities unless transferred to Customer under the provisions in Section 5. The work constructed and installed by Xcel Energy shall be and remain the personal property of Xcel Energy, shall not be considered a fixture of the property, shall not attach to the realty, and shall not be alienable or lienable by Customer or any third party for the Term of this Agreement, and Customer shall work to prevent and resolve lien claims, third party interest or any encumbrances to be placed on the work and/or EV Supply Infrastructure. Xcel Energy shall not permit any mechanics' or other liens to be placed on Customer property during the Term of this Agreement caused by or resulting from any work performed, material, or supplies furnished by or at the request of Xcel Energy or its contractors.
- 4.5 Xcel Energy shall own, operate, and maintain (including but not limited to providing necessary utility locating of all EV Supply Infrastructure) at its own expense the EV Supply Infrastructure at the Customer Location for the Term of this Agreement, unless terminated earlier as provided herein. Xcel Energy may engage one or more third-party contractors to complete its obligations under this Agreement. Xcel Energy shall not knowingly award contracts to contractors to perform work under this Agreement who have been or are suspended or debarred by the State of Minnesota or the United States, and shall terminate any contract covering work to be performed under this Agreement with any contractor found to be suspended or disbarred, and get a replacement viable contractor. Xcel Energy shall be responsible for supervising any third-party contractor it chooses to retain.
- 4.6 Subject to repairs required under Section 3.11, after installation of, and while Xcel Energy owns the EV Supply Infrastructure, Xcel Energy shall conduct emergency repairs on the EV Supply Infrastructure, at its sole expense, and on an as-needed basis, in accordance with the following:
 - 4.6.1 Requests for emergency repairs can be made by Customer or Xcel Energy staff.
 - 4.6.2 Customer's requests for repair shall be made via telephone, email, or text message to an agreed-upon representative at Xcel Energy.
 - 4.6.3 All emergency repairs shall be completed by qualified technicians selected by Xcel Energy.

- 4.6.4 Emergency repair service calls shall begin with inspection of malfunctioning EV Supply Infrastructure, a diagnosis of the potential issue, and an expected time required for repair.
 - 4.6.5 Xcel Energy shall use commercially reasonable efforts to repair the EV Supply Infrastructure in a timely manner.
 - 4.6.6 If the EV Supply Infrastructure cannot be repaired within one hour of the service technician's arrival, Customer shall be notified and given an estimated time the equipment is anticipated to be repaired.
- 4.7 After installation of, and while Xcel Energy owns the EV Supply Infrastructure, Xcel Energy may inspect the EV Supply Infrastructure at the Customer Location for general wear or malfunction on a periodic basis as determined by Xcel Energy. Such inspection may include, but is not limited to the following:
 - 4.7.1 Xcel Energy shall have the right, but not the obligation, to inspect the Charging Equipment for initial and ongoing integration with the EV Supply Infrastructure. Xcel will notify the City prior to inspection of the Charging Equipment.
 - 4.7.2 If periodic inspections reveal EV Supply Infrastructure failure, Xcel Energy shall request on-site technical services for inspection, diagnosis and emergency repair as set forth in Section 4.6, and subject to 3.7.2.
- 4.8 Xcel Energy shall be responsible for the cost of permitting, purchasing, and installing the EV Supply Infrastructure. Xcel Energy shall also be responsible for all costs that Xcel Energy, in its sole discretion, deems reasonably required for operating and maintaining, including repair and emergency repair of, the EV Supply Infrastructure (except that Customer will pay for all power consumed by the EV Supply Infrastructure and/or dispensed from the Charging Equipment, and any costs required under Section 3.11). All payments for this EV Supply Infrastructure will be made directly by Xcel Energy to the third-party contractor retained to complete the work, and Xcel Energy will have no financial obligation for any payments to Customer.
- 4.9 In the case of total equipment failure of all or a portion of the EV Supply Infrastructure, that is not caused by Customer, any of Customer's employees, agents, or partners, including HOURCAR or other partner engaged by Customer for the dedicated use of Charging Equipment, and not covered by a manufacturer's warranty, Xcel Energy may either replace the necessary equipment at Xcel Energy's expense or terminate this Agreement solely with respect to the individual affected Customer Location pursuant to Section 5.1.
- 4.10 The Customer will exercise its discretion reasonably and in good faith, making reasonable efforts to avoid ordering Xcel Energy to relocate its EV Supply Infrastructure where there are commercially feasible and practicable alternatives. In the event the Customer orders or requests Xcel Energy to replace, modify or relocate its EV Supply Infrastructure located on or under Customer Location , the portion of the EV Supply Infrastructure which is in

direct conflict with the Customer project will be removed and the affected Customer Location will be restored to original conditions or any other conditions agreed upon by the Parties, at Xcel Energy's expense, provided that the replacement, modification or relocation is necessary to prevent interference, and not merely for convenience of the local government unit, in connection with: (1) a present or future local government use of the right-of-way for a public project; (2) the public health or safety; or (3) the safety and convenience of travel over the right-of-way. Xcel Energy will not be obligated to re-install or relocate the affected EV Supply Infrastructure, the Customer Location shall be deemed terminated by Customer under section 5.1 and Customer shall pay the Early Buyout Amount for the terminated Customer Location unless all of Xcel Energy's costs and expenses to relocate and reinstall the EV Supply Infrastructure is paid by the Customer or third party.

- 4.11 Notwithstanding any other provision to the contrary, any and all EV Supply Infrastructure located or placed in the public right of way shall be subject to Xcel Energy's applicable franchise agreements. If a conflict exists between the terms and this Agreement and Xcel Energy's local franchise agreement, then the provision providing protections, authority or deference to Customer determinations and rights shall prevail.

5 Term and Termination

- 5.1 This Agreement shall be effective upon the Effective Date. The term of this Agreement (the "Term") shall be effectively immediately upon the date of the last party to sign and continue for a ten (10) year period from the last In-Service Date for all Customer Locations. Either Party may terminate this Agreement, in whole or with respect to any individual Customer Location, for any reason or no reason, without cause, at any time by providing the other Party sixty (60) Calendar Days prior written notice. If Customer terminates this agreement, in whole or with respect to any individual Customer Location, pursuant to this Section 5.1, Xcel Energy shall sell to Customer and Customer shall buy all EV Supply Infrastructure at the terminated Customer Location, on an "as is" basis, without any warranty (express or implied), at an amount equal to the Early Buyout Amount. If Xcel Energy terminates this Agreement pursuant to this Section 5.1, Xcel Energy shall transfer title of the EV Supply Infrastructure to Customer, without any payment from Customer, and the EV Supply Infrastructure will be deemed abandoned in place in "AS IS" condition, without any warranty (express or implied) by Xcel Energy. In the event Xcel Energy terminates this Agreement, in whole or with respect to any individual Customer Location, Customer may request that Xcel Energy remove, at Xcel Energy's expense, the portion of the EV Supply Infrastructure that is above ground, restoring the above ground portion of the Customer Location to original conditions or any other conditions agreed upon by the Parties.
- 5.2 Either Party may terminate this Agreement if the other party materially breaches any of its obligations under the Agreement.
- 5.2.1. Prior to termination pursuant to this Section 5.2, the Party seeking the termination shall give the other Party written notice of the breach and of the Party's intent to terminate. If the breaching Party has not entirely cured the breach within thirty (30) Calendar Days of the notice (or, if the breach is not one

that can be reasonably cured within thirty (30) Calendar Days, and if the breaching Party is not working diligently to cure such breach), then the Party giving the notice may terminate the Agreement without reference to Section 5.1 at any time thereafter by giving a written notice of termination.

- 5.2.2. If Customer terminates pursuant to this Section 5.2 for Xcel Energy's material breach of the Agreement, Xcel Energy shall transfer title of the EV Supply Infrastructure to Customer, without any payment from Customer, and the EV Supply Infrastructure will be deemed abandoned in place in "AS IS" condition, without any warranty (express or implied) by Xcel Energy.
 - 5.2.3. If Xcel Energy terminates pursuant to this Section 5.2 for Customer's material breach of the Agreement, Customer shall buy all EV Supply Infrastructure on an "as is" basis, without any warranty (express or implied), at an amount equal to the Early Buyout Amount for such EV Supply Infrastructure.
 - 5.2.4. A party terminating this Agreement pursuant to this Section 5.2 does not waive its rights to any remedy at law or in equity for a material breach of the Agreement.
- 5.3 One year prior to the end of the Term of this Agreement, the Parties shall endeavor to negotiate a mutually agreeable plan for the EV Supply Infrastructure that will commence at the end of the Term of this Agreement, including but not limited to the following:
- 5.3.1 Extension of the Term of this Agreement;
 - 5.3.2 Title to the EV Supply Infrastructure transfers to Customer in "AS IS" condition, without any warranties (express or implied) by Xcel Energy; or
 - 5.3.3 Xcel Energy removes, at Xcel Energy's expense, the portion of the EV Supply Infrastructure that is above ground, restoring the above ground portion of the Customer Location to original conditions or any other conditions agreed up by parties, and Xcel Energy shall transfer title to the remaining portion of the EV Supply Infrastructure (the "Remaining EV Supply Infrastructure") to Customer, without any payment from Customer, and the Remaining EV Supply Infrastructure will be deemed abandoned in place in "AS IS" condition, without any warranty (express or implied) by Xcel Energy.
- 5.4 If, at the end of the Term of this Agreement, the Parties have not come to a mutual agreement pursuant to Section 5.3 above, the Term of the Agreement shall automatically renew on a month-to-month basis until the Parties are able to come to a mutual agreement or until either Party unilaterally terminates the Agreement pursuant to Section 5.1.
- 5.5 Upon termination of this Agreement, in order to continue receiving electric service for a Charging Station, Customer must sign a new electric service agreement agreeing to take electric service pursuant to a tariff for which the Customer is then eligible.

6 Warranties, Indemnification, and Limitation of Liability

- 6.1 Customer represents and warrants that: (i) the execution, delivery and performance of the Agreement has been duly authorized by all requisite action on the part of Customer, and Customer has full power and authority to grant the rights and licenses granted by the Agreement to Xcel Energy, including but not limited to the rights and licenses set forth in Section 3.2; (ii) this Agreement constitutes the legal, valid, and binding obligation of Customer; (iii) Customer is and will remain duly licensed, authorized or qualified to do business, and in good standing; and (iv) it is and will remain in compliance with all Applicable Laws applicable to it in connection with performance under this Agreement.
- 6.2 Xcel Energy, itself or through its contractor(s), shall perform the installation of the EV Supply Infrastructure in a safe and professional manner in accordance with all Applicable Laws. **EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 6.1, XCEL ENERGY MAKES OR PROVIDES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY AGAINST INFRINGEMENT, WITH RESPECT TO THE WORK TO BE PERFORMED, SERVICES TO BE PROVIDED, OR EV SUPPLY INFRASTRUCTURE TO BE DELIVERED UNDER THIS AGREEMENT. IN THE EVENT TITLE TO EV SUPPLY INFRASTRUCTURE IS TRANSFERRED TO CUSTOMER IN ACCORDANCE WITH THE TERMS OF SECTIONS 5.1, 5.2.3 OR ON TERMINATION PURSUANT TO SECTION 5.3, THE EV SUPPLY INFRASTRUCTURE IS PROVIDED "AS IS" AND WITH NO WARRANTY OF ANY KIND, AND XCEL ENERGY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**
- 6.3 **IN NO EVENT, WHETHER BASED ON CONTRACT, INDEMNITY, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, SHALL XCEL ENERGY BE LIABLE TO CUSTOMER AND ITS AGENTS, CONSUMERS, CONTRACTORS AND EMPLOYEES, FOR SPECIAL, INDIRECT, EXEMPLARY, PUNITIVE, INCIDENTAL, OR CONSEQUENTIAL DAMAGES WHATSOEVER INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS OR REVENUE.**
- 6.4 Subject to the limitations contained in this Agreement, each Party agrees that it will be responsible for its own acts and the results thereof to the extent authorized by Applicable Laws and shall not be responsible for the acts of the other Party and the results thereof.
- 6.5 Xcel Energy does not assume any responsibility for the adequacy, safety, design or satisfactory performance of the Customer's facilities, Customer's design of any EV Supply Infrastructure or the Charging Equipment. Except for as provided in Section 6.6, and notwithstanding the foregoing, to the fullest extent allowed by Applicable Laws, Customer shall, at its own expense, defend, indemnify and hold Xcel Energy harmless from and against any claims, lawsuits, liability, losses, damages or expenses (including attorney's fees) arising out of, resulting from or in any way connected with the: (i) the Charging Equipment; (ii) breach of any warranty set forth in Section 6.1 or (iii) Customer's, or its employees', agents', contractors' or Consumers' negligent acts or omissions or willful misconduct; or (iv) the breach of Section 3.2 (License).
- 6.6 Xcel Energy shall, at its own expense, defend, indemnify and hold harmless Customer from any and all claims, actions or suits of any character brought as a result of injuries or damages received or sustained by any person, persons or property on account of Xcel Energy's construction or maintenance of the EV Supply Infrastructure, except to the

extent caused by Customer's negligence, intentional misconduct or a breach of Customer's obligations under this Agreement.

- 6.7 In no event will Xcel Energy be liable to Customer under this Agreement for any claims, expenses, losses, damages, or lawsuits arising out of any interruptions or disturbances in electric service. Except as described in this section, Xcel Energy's liability on any claim of any kind for any loss or damage arising out of or in connection with or resulting from this Agreement, or from performance or breach thereof, shall in no case exceed the total dollar amount for the specific work giving rise to the claim.

7 General Terms

- 7.1 *No Third-Party Beneficiary.* This Agreement is between the Parties and creates no third-party beneficiaries. Nothing in this Agreement gives or shall be construed to give or provide any benefit, direct, indirect, or otherwise to third parties unless third persons are expressly described as intended to be beneficiaries of its terms.
- 7.2 *Assignment Prohibited.* Customer shall not assign the Agreement, or any part thereof, nor delegate in whole or in part, its responsibilities hereunder, without the prior written consent of Xcel Energy. Unless otherwise agreed to in writing by Xcel Energy, no assignment will release or discharge the Customer from any obligations under the Agreement. Any prohibited assignment or delegation shall be null and void.
- 7.3 *Legal Compliance.* The Parties shall comply with all Applicable Laws. Each Party shall monitor its agents, contractors, and employees for the purposes of ensuring compliance with all Applicable Laws. If any change in circumstances or law will affect a Party's performance under this Agreement, that Party shall notify the other Party of the change in circumstances or law at the earliest reasonable opportunity, and the Parties will negotiate in good faith to modify the Agreement to take into account the changed circumstance or law.
- 7.4 *Dispute Resolution.* In the event of any Dispute arising out of or relating to this Agreement, the complaining Party shall provide written notice of Dispute to the other Party. The Dispute notice shall describe the facts surrounding the Dispute in sufficient detail to apprise the other Party of the nature of the Dispute.

Xcel Energy and Customer shall attempt in good faith to settle all Disputes through the negotiation process set forth in this Section. To this effect, unless otherwise agreed, Xcel Energy and Customer shall conduct at least one face-to-face meeting between the designated representatives from both Parties in an attempt to reach a solution that is satisfactory to both Xcel Energy and Customer. Such a meeting shall take place within seven (7) Calendar Days following delivery of a Dispute notice. If that meeting does not resolve the Dispute, Xcel Energy and Customer shall have executive level leadership from both Parties meet and attempt to resolve the Dispute.

If Xcel Energy and Customer fail to resolve a Dispute in accordance with this Section, either Party may, subject Section 7.5 proceed to mediation by a mutually-agreed upon mediator. If the parties are unable to agree upon a mediator, the mediator will be selected by the Ramsey County District Court. If the parties are unable to resolve all

disputes at mediation, either Party may, subject to Section 7.5, proceed to a court of competent jurisdiction and may, subject to any limitation set forth herein, pursue any remedies available to it at law or in equity. The costs of mediation shall be shared equally between the Parties.

- 7.5 *Applicable Law and Venue.* This Agreement shall be interpreted according with the laws of the State of Minnesota. Venue for all legal proceedings arising out of or relating to this Agreement or breach thereof shall be in the state or federal court with competent jurisdiction in Ramsey County, Minnesota.
- 7.6 *Non-Waiver.* The failure of either Party at any time to insist upon the strict performance of any or all of the terms, conditions, and covenants in this Agreement shall not be deemed a waiver by that Party of any subsequent breach or default in the said terms, conditions, or covenants by the other Party.
- 7.7 *Complete Agreement.* This Agreement constitutes the complete and exclusive understanding of the parties concerning its subject matter. This Agreement supersedes all prior agreements, representations, understandings, and communications, written or oral, between the Parties as to the subject matter of this Agreement.
- 7.8 *Amendments.* The terms of this Agreement may be changed, amended or modified only by mutual signed agreement of the parties.
- 7.9 *Data Practices.* Each Party must comply with the Minnesota Government Data Practices Act (Minnesota Statutes, chapter 13), as it applies to any data received, collected, stored, or disseminated by a Party for the work performed under this Agreement. However, nothing prevents the public filing of this Agreement with the Minnesota Public Utilities Commission. Each Party shall be responsible for specifically identifying any information or data in the Agreement that it believes to be Not Public Data.

If a Party receives a data practices request for information about or data from this Agreement (the "Receiving Party"), the Receiving Party shall promptly notify the other Party (the "Notified Party") in writing or email that a data practices request concerning this Agreement has been received by the Receiving Party and identify what information or documents it would intend to produce in response to such a request. Upon receipt of notice from the Receiving Party that it has received a data request, the Notified Party shall have ten Working Days within which to notify the Receiving Party that the Notified Party does not believe the information or documents can be released pursuant to the Minnesota Government Data Practices Act or other applicable law, and why. The Receiving Party shall be responsible for determining whether the requested data are public or otherwise classified and shall notify the Notified Party in writing or email of its decision, which notification shall be given at least three Working Days prior to release of the information or data to the requesting third party (if applicable). If the Notified Party disagrees with the Receiving Party's determination, the Notified Party may seek a protective order via court of competent jurisdiction.

Nothing in this section shall prohibit the disclosure of information, as required by law or legal process, to a court of competent jurisdiction or any agency or governmental body from the state or federal government with appropriate authority to request such

information. If either Party is or could be legally compelled to make disclosure of information, the Receiving Party will notify the Notified Party prior to making such disclosure (unless prohibited by Applicable Laws) in order to permit the Notified Party to take steps to limit the effects of such disclosure. To be clear, any request for such information or documents issued to Xcel Energy from the Minnesota Public Utilities Commission, the Minnesota Department of Commerce, or the Office of the Minnesota Attorney General may be responded to by Xcel Energy in full, and if either Party believes that some portion of the response is non-public, such information or document will be marked in a manner consistent with the Minnesota Government Data Practices Act.

All reports, drawings, plans, specifications, calculations, studies, software programs, tapes, models, and memoranda, if any, assembled or prepared by Xcel Energy or Xcel Energy's affiliates, independent professional associates, agents, consultants, contractors, or subcontractors pursuant to this Agreement are instruments of service in respect of the Agreement, and Xcel Energy shall retain all ownership and property interest therein. Customer may make and retain copies for information and reference in connection with the Pilot Project; provided, however, that it is understood and agreed that such documents are not intended to be re-used by Customer or others on extensions of the Pilot Project or on any other project or any other purpose other than as expressly set forth in this Agreement, and Customer shall not re-use or disclose to any third party all or any portion of such work product without the express prior written consent of Xcel Energy, which consent shall not be unreasonably withheld.

- 7.10 *Force Majeure.* If a Party's performance is delayed or hindered by a Force Majeure Event, such Party is excused from such performance for the period of delay, provided that the Party claiming a Force Majeure Event has notified the other Party of the delay as soon as is reasonably possible. In such event, the period for the performance shall be extended for the period of such delay.
- 7.11 The Parties are independent contractors. Nothing in this Agreement or in the activities contemplated by the Parties hereunder shall be deemed to create an agency, partnership, employment or joint venture relationship between the Parties or any of their representatives. Neither Party is an agent of the other nor has the authority to represent the other as to any matters. Customer responsible for the safety of its respective agents, employees and other representatives. Xcel Energy in no way assumes any of the duties, obligations or liabilities attributed to Customer under the Agreement.
- 7.12 Those provisions of this Agreement which would require that they survive termination of the Agreement in whole or part in order to give them full force and effect will survive the termination of the Agreement, regardless of the date, cause or manner of the termination. Such provisions include but are not limited to Sections 3.4, 5.2, 5.5, 6.1, 6.2, 6.3, 6.4, 6.5, 7.1, 7.4, 7.5, 7.12, 7.14, 7.15, as well as Xcel Energy's right to retain any Data collected in connection with the Pilot Project. In addition, all rights of action arising from or related to the Agreement that accrue during the Term of the Agreement, and any remedies for such claims, both legal and equitable, will survive such termination.

- 7.13 *Branding and Consumer Education.* The Parties agree to discuss opportunities for Xcel Energy branding, consumer outreach and education efforts related to the benefits of electric vehicles, and implementation of renewable energy in connection with the Pilot Project.
- 7.14 *Taxes on Sale of EV Supply Infrastructure.* If Xcel Energy sells the EV Supply Infrastructure to Customer for an amount equal to the Early Buyout Amount for such EV Supply Infrastructure and Customer agrees to purchase the same, then Xcel Energy will deliver to Customer a Bill of Sale with a purchase price equal to the Early Buyout Amount for such EV Supply Infrastructure. Customer further agrees that, in accordance with federal and state laws in effect at the time of the sale of the EV Supply Infrastructure from Xcel Energy to Customer: (i) Customer shall be responsible for and shall pay transfer taxes, either directly to a taxing authority or to Xcel Energy, as required by law, related to the Early Buyout Amount of the EV Supply Infrastructure as stated on the Bill of Sale; and (ii) Xcel Energy agrees to complete a Form W-9 “Request for Taxpayer Identification Number and Certification” in the event of such sale.
- 7.15 *Notice.* Any notice required or permitted by this Agreement shall be deemed given (i) when delivered by hand, (ii) on the next business day after being sent by a reputable overnight courier service for next business day delivery, or (iii) on the third business day after being sent by prepaid United States mail, return receipt requested, in each case to the Party at the address specified as follows:

Customer: _____

Xcel Energy: Public Charging EV Program Team
 ATTN: Program Manager
 401 Nicollet Mall Floor 6
 Minneapolis, MN 55401
 ElectricVehicles@xcelenergy.com

Either Party may change its address for notice purposes by giving the other Party prior written notice of the new address and the date upon which the change will be effective.

- 7.16 *Counterparts.* The parties may sign this Agreement in counterparts, each of which constitutes an original, but all of which together constitute one instrument.

7.17 *Electronic Signatures.* The parties agree that the electronic signature of a party to this Agreement shall be as valid as an original signature of such party and shall be effective to bind such party to this Agreement. The parties further agree that any document (including this Agreement and any attachments or exhibits to this Agreement) containing, or to which there is affixed, an electronic signature shall be deemed (i) to be “written” or “in writing,” (ii) to have been signed and (iii) to constitute a record established and maintained in the ordinary course of business and an original written record when printed from electronic files. For purposes hereof, “electronic signature” also means a manually signed original signature that is then transmitted by any electronic means, including without limitation a faxed version of an original signature or an electronically scanned and transmitted version (e.g., via PDF) of an original signature. Any party’s failure to produce the original signature of any electronically transmitted signature shall not affect the enforceability of this Agreement.

IN WITNESS WHEREOF, each of the undersigned is duly authorized and directed to sign this Agreement.

City of Saint Paul

By _____ Date: _____

Name _____

Title _____

Northern States Power Company, d/b/a Xcel Energy

By _____ Date: _____

Name _____

Title _____